

Title	Juror Motion to Set Aside Sanctions Imposed by Default (recommend adoption of rule 862 and approval of form MC-070)
Summary	The proposed rule establishes procedures for a juror to move to set aside monetary sanctions imposed by default when the juror fails to respond to two summonses and to a failure to appear notice.
Source	Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee
Staff	Susan R. Goins, 415-865-7990, susan.goins@jud.ca.gov
Discussion	<p>A recent amendment to Code of Civil Procedure section 209 (attached) requires the Judicial Council to adopt a rule containing procedures for a prospective juror against whom a sanction has been imposed by default to move to set aside the default.</p> <p>Prior to the amendment, the only penalty a court could impose for a prospective juror's failure to attend or respond to a jury summons was contempt of court, following an order to show cause hearing and compliance with contempt procedures (see Code Civ. Proc. §§ 1212–1222), including the privilege against self-incrimination (<i>Ex Parte Gould</i> (1893) 99 Cal. 360, 362-363) and proof of guilt beyond a reasonable doubt. (<i>Hotaling v. Superior Court</i> (1923) 191 Cal. 501, 505, citing <i>In re Buckley</i>, 60 Cal. 1.) The amendment allows a court to impose monetary sanctions through procedures that do not require a contempt hearing and finding.</p> <p>The proposed rule allows a prospective juror to bring a motion to set aside sanctions, describes what the motion should contain (“a short and concise statement of the reasons why the prospective juror was not able to attend when summoned for jury duty and any supporting documentation”), and provides that a court must set aside sanctions if a prospective juror demonstrates good cause.</p> <p>It requires that a motion to set aside sanctions be brought within 60 days of the award of sanctions and allows a court to decide the motion with or without a hearing. The committee is particularly interested in comments on the timeframe for bring a motion and whether a hearing should be required.</p> <p>The proposed form would allow a prospective juror to bring a motion to set aside sanctions by following simple instructions on the form and filing the motion, along with any supporting documentation. The</p>

purpose of providing an optional form for prospective jurors subject to sanctions is to assist them in properly bringing motions containing the necessary information for courts to decide whether to set aside sanctions.

Attachments

Rule 862 of the California Rules of Court is adopted effective January 1, 2005 to read:

**Rule 862. Juror Motion to Set Aside Sanctions Imposed by Default**

**(a) Motion**

A prospective juror against whom sanctions have been imposed by default under Code of Civil Procedure section 209 may move to set aside the default. The motion must be brought no later than 60 days after sanctions have been imposed.

**(b) Contents of motion**

A motion to set aside sanctions imposed by default must contain a short and concise statement of the reasons why the prospective juror was not able to attend when summoned for jury duty and any supporting documentation.

**(c) Judicial Council Form may be used**

A motion to set aside sanctions imposed by default may be made by completing and filing Judicial Council Form MC-070.

**(d) Hearing**

A court may decide the motion with or without a hearing.

**(e) Good cause required**

If the motion demonstrates good cause, a court must set aside sanctions imposed against a prospective juror.

**(f) Continuing obligation to serve**

Nothing in this rule relieves a prospective juror from the obligation of jury service.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):   TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY   <h2 style="text-align: center;">DRAFT 3/1/04</h2>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
IN RE (name):	
<b>JUROR'S MOTION TO SET ASIDE SANCTIONS</b>	CASE NUMBER:
<p>Notice: This form must be filed in accordance with instructions provided by the court in a failure to appear notice, order to show cause, or notice of sanctions imposed. A motion to set aside sanctions must be filed no later than 60 days after sanctions have been imposed. Provide a separate explanation for each time you were unable to appear for jury duty, unless the reason you were unable to appear for jury duty was the same each time. If the reason was the same each time state that it was the same. If a court grants the motion and sets aside sanctions, it does not relieve the prospective juror from the obligation of jury service. Do not use this form if you have been found in contempt of court for failure to appear when summoned for jury duty.</p>	

1. Prospective juror(name): \_\_\_\_\_ Prospective juror's identification number (specify): \_\_\_\_\_
2. Dates prospective juror was summoned to appear, date of notice to appear, and date of order to show cause hearing (list each): \_\_\_\_\_
3. I was unable to attend when summoned for jury duty for the following reasons (specify): \_\_\_\_\_

☐ Continued on attachment 3.

4. ☐ Attachment 4 contains copies of the following documents in support of this motion (list): \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PERSON WHO SERVED ANSWER )

Cal Code Civ Proc § 209

LEXSTAT CAL.CODE CIV. PROC. SEC. 209

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2/11/04  
2003-04 3RD EXTRA. SESS., CH.1 AND 5TH EXTRA. SESS., CH.2

CODE OF CIVIL PROCEDURE  
PART 1. Courts of Justice  
TITLE 3. Persons Specially Invested With Powers of a Judicial Nature  
CHAPTER 1. Trial Jury Selection and Management Act

**GO TO CALIFORNIA CODES ARCHIVE DIRECTORY**

*Cal Code Civ Proc § 209 (2004)*

§ 209. (Repealed January 1, 2007) Enforcement of summons

(a) Any prospective trial juror who has been summoned for service, and who fails to attend as directed or to respond to the court or jury commissioner and to be excused from attendance, may be attached and compelled to attend . Following an order to show cause hearing, the court may find the prospective juror in contempt of court, punishable by fine, incarceration, or both, as otherwise provided by law.

(b) In lieu of imposing sanctions for contempt as set forth in subdivision (a), the court may impose reasonable monetary sanctions, as provided in this subdivision, on a prospective juror who has not been excused pursuant to Section 204 after first providing the prospective juror with notice and an opportunity to be heard. If a juror fails to respond to the initial summons within 12 months, the court may issue a second summons indicating that the person failed to appear in response to a previous summons and ordering the person to appear for jury duty. Upon the failure of the juror to appear in response to the second summons, the court may issue a failure to appear notice informing the person that failure to respond may result in the imposition of money sanctions. If the prospective juror does not attend the court within the time period as directed by the failure to appear notice, the court shall issue an order to show cause. Payment of monetary sanctions imposed pursuant to this subdivision does not relieve the person of his or her obligation to perform jury duty.

## Cal Code Civ Proc § 209

(c) (1) The court may give notice of its intent to impose sanctions by either of the following means:

(A) Verbally to a prospective juror appearing in person in open court.

(B) The issuance on its own motion of an order to show cause requiring the prospective juror to demonstrate reasons for not imposing sanctions. The court may serve the order to show cause by certified or first-class mail.

(2) The monetary sanctions imposed pursuant to subdivision (b) may not exceed two hundred fifty dollars (\$ 250) for the first violation, seven hundred fifty dollars (\$ 750) for the second violation, and one thousand five hundred dollars (\$ 1,500) for the third and any subsequent violation. Monetary sanctions may not be imposed on a prospective juror more than once during a single juror pool cycle. The prospective juror may be excused from paying sanctions pursuant to subdivision (b) of Section 204 or in the interests of justice. Notwithstanding any other provision of law, the full amount of any sanction paid shall be deposited in a special account in the county treasury and transmitted from that account monthly to the Controller for deposit in the Trial Court Trust Fund. It is the intent of the Legislature that the funds derived from the monetary sanctions authorized in this section be allocated, to the extent feasible, to the family courts and the civil courts. The Judicial Council shall, by rule, provide for a procedure by which a prospective juror against whom a sanction has been imposed by default may move to set aside the default.

(d) On or before December 31, 2005, the Judicial Council shall report to the Legislature regarding the effects of the implementation of subdivisions (b) and (c). The report shall include, but not be limited to, information regarding any change in rates of response to juror summons, the amount of moneys collected pursuant to subdivision (c), the efficacy of the default procedures adopted in rules of court, and how, if at all, the Legislature may wish to alter this chapter to further attainment of its objectives.

(e) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

**HISTORY:** Added Stats 1988 ch 1245 § 2.

Amended Stats 2003 ch 359 § 1 (AB 1180), repealed January 1, 2007.